

ROBERT M. RUDIO  
VERNE ANDREWS

IBLA 82-35

Decided January 28, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void. M MC 57392, M MC 58440.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn  
Land--Withdrawals and Reservations: Effect of

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

APPEARANCES: Robert M. Rudio, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated October 5, 1981, by the Montana State Office, Bureau of Land Management (BLM), declaring the Lingo #3, M MC 57392, and Lingo #4, M MC 58440, mining claims (located on March 31, 1980, and April 30, 1980, respectively) null and void ab initio. This appeal is limited to the holding on the Lingo #3 claim. The decision states that at the time the claims were located, the W 1/2 SE 1/4 NW 1/4, W 1/2 NE 1/4 SW 1/4, SE 1/4 SW 1/4, and the W 1/2 SW 1/4 SE 1/4 in sec. 8, T. 14 N., R. 9 W., Principal meridian, Montana, were segregated from mineral entry by a proposed withdrawal for preservation of historical sites in the Helena National Forest.

On June 8, 1972, the Department of Agriculture had filed application, serial No. M 21943, for withdrawal of the above lands. A notice of the withdrawal was published in the Federal Register at 37 FR 12980 (June 30, 1972). By notice dated September 12, 1977, BLM afforded interested persons an opportunity for hearing on the proposed withdrawal.

This notice states that in accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714(g) (1976), the segregative effect of the pending withdrawal application would terminate on October 21, 1991, unless sooner terminated by action of the Secretary. <sup>1/</sup>

Appellants assert in their statement of reasons that the area "proposed to be withdrawn" that is covered by the Lingo #3 claim does not contain any historical sites. They say that persons interested in the area's historical sites are no longer living there, and that the sites do not appear to have much historical significance.

[1] It is well settled that mining claims located on lands within a withdrawal are not open to mineral entry and are properly declared null and void. Richard Thorpe, 59 IBLA 176 (1981). Northwest Explorations, Inc., 52 IBLA 87, 88 I.D. 31 (1981). Such lands are closed to mineral entry when the application for withdrawal is noted on the records, in this case June 30, 1972. Under 1714(g) of FLPMA, the duration of the withdrawal is clearly set forth. FLPMA also affords appellants the opportunity to place on record their views of the significance of the historical sites.

Since these claims were located after the segregative date, BLM properly declared them null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

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<sup>1/</sup> 43 U.S.C. § 1714(g) (1976) provides: "All applications for withdrawal pending on October 21, 1976, shall be processed and adjudicated to conclusion within fifteen years of October 21, 1976, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date."

